

REMARKS

In view of the above amendments and following remarks, the Examiner is respectfully requested to allow Claims 1-3, 9-38, and 48-55 the only claims pending and currently under examination in this application following entry of the above amendments.

Claim 1 has been amended to further clarify the nature of the coupling between the top and bottom members. It is noted that the amendment to claim 1 is made pursuant to previous claim 8 and is further supported by the specification as filed. Consequently, no new matter has been added.

As no new matter has been added by way of the amendments made herein their entry is respectfully requested.

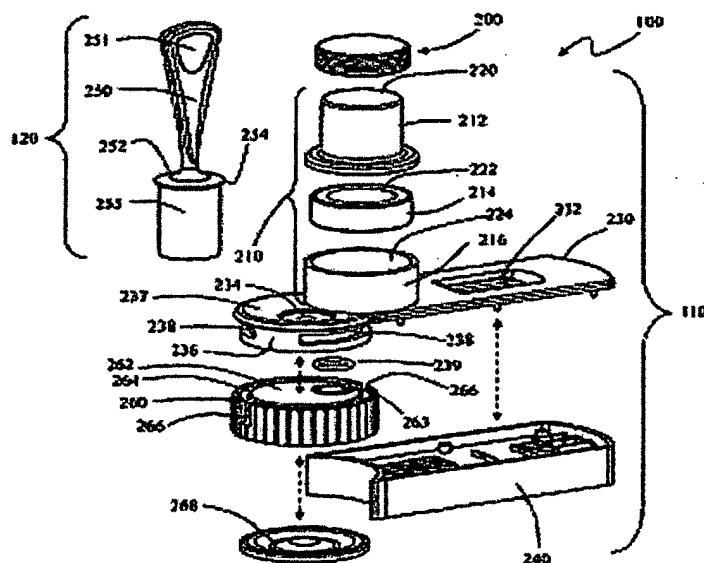
Rejection of Claims 37 and 38 under 35 U.S.C. § 112

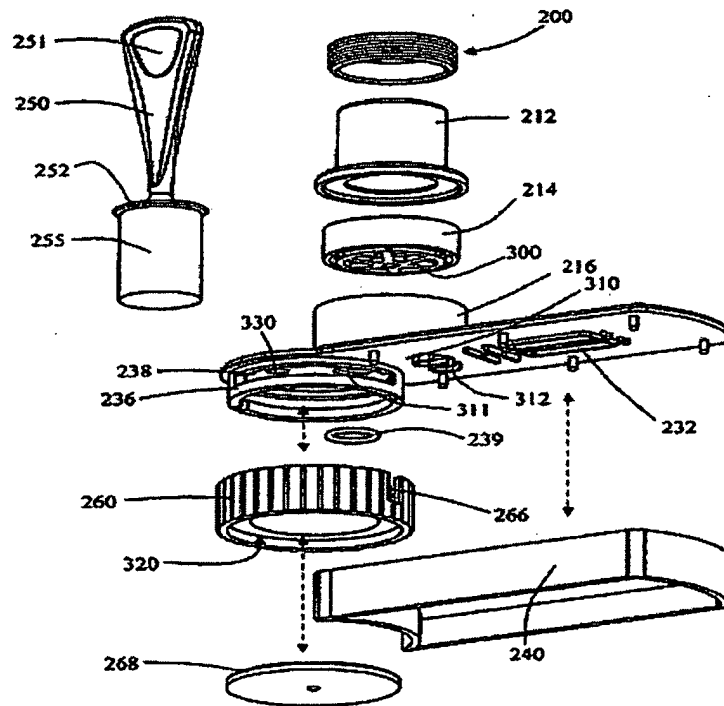
In the Final Rejection mailed April 20, 2009, the Office rejected claims 37 and 38 as allegedly including new matter. Claims 37 and 38 recite a sample application well, a sample expression means, and a dividing or division means. Specifically, the Office asserts that it is "new matter" to recite a "separate" sample expression means and a sample division means, when they are physically connected to each other and in fluid communication. The Applicants respectfully disagree and traverse.

The Office appears to be confused with respect to the Applicant's recitation of the term "separate." In an effort to clarify this confusion, the Applicants would like to draw the attention of the Office to the definition of the term "separate," which according to the Cambridge On-line

Dictionary of American English means: "existing or happening independently or in a different physical space." Accordingly, within the context of the present claims, the term "separate" is an adjective meaning individual and distinct. Thus, as recited in the claims, the device includes a sample well, an expression means, and a division or dividing means, wherein each of these elements are independent and distinct elements from one another (e.g., they occupy a different space from one another), albeit they may be joined with relationship to the claimed device.

This can clearly be seen with respect to FIGS. 2 and 3, set forth herein below. A representative embodiment of the Applicants' claimed device includes a sample application well, demarcated as element 210; a sample expression means, demarcated as element 300; and a division or dividing means, demarcated as element 310. As can be seen with respect to the below, each of the sample application well, the sample expression means, and the division or dividing means are separate elements that are distinct from one another but capable of being associated with one another, for instance, in fluid communication. See also, paragraph 45.





Accordingly, in view of the above, the Applicants contend that one of skill in the art would understand the term "separate" as used in the context of the present claims to be an adjective meaning individual and distinct, and in view of the Figures above, one of skill in the art would clearly understand that the sample well, expression means, and division or dividing means, are independent and distinct elements from one another. Thus, the Applicants contend that contrary to the assertions of the Office, there is support for the claim's recitation of the term "separate," and consequently, this rejection should be withdrawn.

Rejection of Claims 1-3, 9-38 and 48-55 under 35 U.S.C. § 102(e)

In the Final Rejection mailed April 20, 2009, the Office maintained the rejection of claims 1-3, 9-38 and 48-55 under 35 U.S.C. §102(e), as allegedly being anticipated by Bachand et al. (USPN 6,489,172). The Applicants respectfully traverse.

With respect to claim 1, claim 1 is directed to a device wherein the device includes a casing. The casing includes two parts: a top member and a bottom member. Claim 1 has been amended to clarify that the top and bottom members are configured such that they are removably coupled to one another. The Office asserts that the device disclosed in Bachand includes a casing having a top "portion" and a bottom "portion." The Office further asserts that the top and bottom portions as disclosed in Bachand are removably coupled together because a large force can be supplied to the top and bottom portions which force could thereby separate the top and bottom portions. The Applicants respectfully disagree and contend that even if a blunt force were capable of separating the alleged top and bottom portions of the Bachand device, these portions would still not be configured for being remeovably coupled together as a blunt force would be required to break the pieces apart. Outside of the application of such a force, the device would remain in one piece.

The Applicants further contend that the Office is confusing the term "member" with the term "portion." With respect to the Applicants' claims, the casing includes two separate and distinct *members*. The two *members* are a top member and a bottom member. The top and bottom members are two separate entities that are capable of being removably coupled to one another. This removable coupling connotes that the two members are configured for being joined, disjoined, and rejoined with one another. The coupling may be effectuated by various different methods the nature of which is not pertinent to the present claims so long as the two members are capable of being removably joined.

Buchand, on the other hand, discloses a device wherein the device includes a platform, which platform the Office equates with the presently recited casing. However, Buchand does not teach that the disclosed platform is comprised of two members. Nor does Buchand teach

that the disclosed platform includes two members that are configured for being removably coupled to one another. Rather, Buchan simply sets forth a platform, which platform consist of a single unitary base member. While the Office may be correct in its assertion that the platform may have two portions, these two portions are not, however, the equivalent to the Applicants recited top and bottom members. Specifically, of logical necessity, a single member having two portions remains a single member, albeit with two portions, which portions are intrinsic to the single member of which they are comprised. This is completely different from the Applicants' casing, which casing includes two separate and distinct members which members are removably coupled together.

Furthermore, the Office asserts that Buchand's platform may be struck with a force and then broken into pieces, and therefore the Office asserts that Buchand discloses a casing having a top and bottom member wherein the top and bottom member are removably coupled together. The Applicants respectfully disagree. Even assuming that the platform could be broken into pieces, prior to such breaking, the platform still consist of a single entity, and it is not until after the platform is broken that it would include two distinct members as recited in the present claims.

Further still, the Office asserts that Buchand discloses that the platform is made of two separate pieces when the device is being put together. The Applicants have review Buchand and have not found wherein Buchan teaches or even suggests this. The Applicants therefore respectfully request that the Office cite with particularity wherein the asserted teaching is in fact disclosed.

Additionally, the Office appears to be requiring the Applicants to limit the claims by actually reciting the nature of the coupling mechanism between the first and second members. The Applicants respectfully contest this point and contend that the Office is trying to limit the Applicants' claims beyond what is the rightful scope of the invention. The nature of the coupling is not fundamental to the claims in their present form and may vary dependent on various design considerations. Therefore, the Applicants should not be limited in the coupling of the lower and upper members by having to recite one specific coupling mechanism among many known in the art.

With respect to claims 37 and 38, each of these claims have been amended to indicate that the device includes both a sample application well and an expressor. The Office has not shown where in Bachand a device is taught which device includes both a sample application well as well as an expressor. Accordingly, Banchand does not teach all the elements of the rejected claims and therefore does not anticipate the claimed invention. The Applicants note that outside of asserting that claims 37 and 38 include new matter, the Office has not responded to the Applicants' previously submitted arguments, nor shown where Bachand teaches all the elements of the rejected claims. Therefore, this rejection should be removed or the finality of this rejection abated so that the Applicants have the chance to fully respond to this rejection.


CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

On the basis of the foregoing amendments and remarks, the Applicants respectfully submit that the pending claims are in condition for allowance. No additional fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 37565-508001US. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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James S. Nolan, Reg. No. 53,393,
on behalf of: Fred C. Hernandez (Reg. No. 41,832)
Attorney/Agent for Applicants

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
3580 Carmel Mountain Road, Suite 300
San Diego, CA 92130
Telephone: (858) 314-1500
Fax: (858) 314-1501
Email: fhernandez@mintz.com
PTO Customer Number 64046